

REGISTER OF CLASSIFICATION DECISIONS

Date of entry in Register:	02 September 2004
Name of applicant/court:	District Court at Manukau
Applicant to the Labelling Body:	Not Applicable
Title of Publication:	Holiday Snapshots
Other Known Title(s):	"Holiday Snapshots"
Director(s):	Not Applicable
Producer(s):	Not Applicable
Publisher:	Not Stated
Author(s):	David Hamilton (Photographer)
Format:	Book
Country of Origin:	France
Language(s):	English

.....
Components of film originally examined: Not Applicable.

Feature:	Running Time:
Trailers:	Running Time:
	Total Running Time:

Excision/Alteration: Not Applicable.

Reason(s) for Excision:

Not Applicable.

Classification Decision:

Objectionable.

Display Conditions:

Not Applicable.

Descriptive Note:

Not Applicable.

.....

Direction to issue a label has been given on: Not Applicable.

.....

SUMMARY OF THE REASONS FOR DECISION:

Holiday Snapshots deals with matters such as sex and the Board's view is that it contravenes section 3(2)(a) of the Films, Videos, and Publications Classification Act 1993 (the Act) in that it promotes or supports or tends to promote or support the exploitation of young persons for sexual purposes and is accordingly deemed objectionable. Alternatively it contravenes section 3(3) to such an extent that it should be classified as objectionable. The classification of "Holiday Snapshots" should remain as objectionable, as it is appropriate and remains conclusive evidence of the Board's previous classification.

The Publication

Holiday Snapshots is a soft covered collection of photographs published in 1999. The book is 215 pages long with between one and four colour or black and white photographs on each page. There is minimal text, and apart from a short introduction the only text is short captions for each photograph or set of photographs. The publication quality of the book is good and the photographs are technically competent. The photographs are almost exclusively of young women posed in suggestive poses. The ages of the women are not ascertainable but by their physical appearance it would appear that many were teenagers when photographed and it is possible that some could have been as young as 10. The text accompanying the photographs tends to place a sexual interpretation on the photograph and suggest a willingness of the model to engage in sexual activity.

Background to Review

This is a review of an earlier decision of the Board and under section 41 of the Act a subsisting decision of this board is “conclusive evidence” that the publication is objectionable. A person charged with an offence under the Act has the right to have the publication referred back to the Board for “reconsideration” if the decision is more than one year old. Section 52(2) of the Act requires the Board to re-examine the publication without reference to the decision of the Classification Office. There is no impediment to the Board taking into account its former decision.

Reasons for Decision

The publication does not deal with horror, cruelty or violence. Crime is possibly dealt with in that the publication arguably deals with the question of sex with young under age women although this presupposes that the publication deals with matters such as sex.

The publication does deal with matters such as sex. The publication goes further than the passive portrayal of nudity. The use of highly suggestive prose when combined with the posed nature of the young women points to an activity rather than the expression of an attitude or opinion. The prose does not appear to be the expression of the opinions of the author; rather they are perhaps fictitious statements ascribed to the young models appearing in the photographs.

The Publication goes beyond mere depiction and promotes or supports, or tends to promote or support the exploitation of young persons for sexual purposes. The reasons for this include the following:

- (a) Many of the children or young women were portrayed as being carefree while naked and being sexually available.
- (b) The emphasis on young persons, children and sexuality in the publication normalises and therefore would reinforce with some the idea that they are capable of understanding, enjoying, reciprocating and arguably desirous of adult sexual interest.
- (c) The girls have been prepared in a deliberate way to simply provide those who enjoy pictures of naked children with material to suit their tastes.
- (d) A naked photograph of a child per se is not of concern. This, however, is an internationally distributed publication where the collation of the photographs has been for commercial benefit. Further, the exploitation need not be of the model, rather the harm aimed at by the section is the exploitation of children and young persons as a group for sexual purposes, and the “normalisation” of sexual activity by the young increases the possibility of such exploitation.

The publication therefore breaches section 3(2)(a) of the Act and accordingly is objectionable.

Independent of our finding under section 3(2) of the Act, this Board also considers the publication to fall within section 3(3).

The publication clearly exploits the nudity of young persons even if it is for “artistic” reasons. It also depicts sexual conduct with or by young persons, and it at least

arguably promotes or encourages criminal acts, being sexual contact with under age persons.

The photographs themselves are not sexually explicit, but the various combinations of photographs and captions are important with the captions placing a sexual interpretation on the nudity in the photographs.

The photographs are exploitative and the Board's view is that whether the exploitation is for artistic purposes or for financial gain is not relevant, the effect is still the same. Some of the photographs are dehumanising; they depict young women as being part of a "meat market", as a commodity to be used. Those photographs showing the torso only, or using lighting or line, with suggestive captions to draw attention to sexuality, add to the "meat market" image to dehumanise the subjects, and focus on a sexual interpretation of the young bodies.

The dominant effect of the book is of a collection of scantily clad or nude girls who are presented as being sexually available. They are provocatively posed and the photographs are clearly designed to titillate and excite and appeal to the prurient taste of the reader. The girls appear concupiscent, and the photos suggest that sexual activity by young girls is normal, healthy and invited. The photographs themselves are at least moderately sensual.

The publication is technically of good quality. It presents a permanent record. The photographs are of reasonably high quality by a world ranked photographer and filmmaker of that particular genre.

The publication is intended for viewing by persons having a predilection to the sort of behaviour depicted. The purpose would be to titillate or perhaps to reinforce the idea that young girls are appropriate subjects for sexual interest, and that they are concerned with inviting sexual attention.

The overall effect of the book is to portray girls and young women as being sexually available. The appropriate decision is to rule the publication objectionable. It offends too heavily the various principles contained in section 3(3) of the Act for the ruling to be otherwise.

It was suggested that the Board could permit the publication to be restricted to the Applicant pursuant to section 23(2)(c)(ii) of the Act with the proviso that it remains in his property at all times. This section does not apply to publications "deemed" to be objectionable under section 3(2). Even if this power is available, the Board considers that the publication should not be released. The fact that this particular copy of the publication may be kept away from the gaze of others does not affect its categorisation.

The Bill of Rights Act

This Board must of course bear in mind the right to the free expression of speech and ideas contained in the New Zealand Bill of Rights Act 1990.

This Board has in other reviews such as *Baise Moi* (2002) and *Bully* (2003) discussed the "five step process" set out in the Moonen decision.

The first two Moonen steps are to identify the different possible interpretations of the word or words in the Act and if only one meaning is properly open to adopt it.

“Exploitation” has been defined by use of a dictionary definition. No Bill of Rights considerations arise because of the definitions proposed.

The third step involves identifying the extent if any to which the meaning adopted limits the relevant right or freedom. The Act limits the scope of the right of freedom of expression by defining publications as objectionable in accordance with section 3 of the Act. The definitions of the phrases in section 3 will accordingly have an effect on freedom of speech.

The Board is then required to consider whether the extent of such limitation, if found, can be demonstrably justified in a free and democratic society. The Act is designed to provide a classification and censorship system for publications. The Board must balance the value of freedom of expression against the need to protect persons particularly young persons from the various parts of the publication identified as of concern.

The fifth step requires the Board to consider whether the limitations it has placed on *Holiday Snapshots* are justified on balance, taking into account the intention of the Act under which the Board is required to make its decision. The Board considers that its decision “can be demonstrably justified in a free and democratic society” as required by Section 5 of the New Zealand Bill of Rights Act 1990.

A classification of “objectionable” is a justified limitation on the freedom of expression given Parliament’s clearly declared intention that material likely to cause this sort of injury should be banned. The action must of course be proportionate and no more than is necessary to achieve Parliament’s intention, and the Board considers that the proposed classification qualifies under these requirements.

OFLC No: 401340